

SEP - 6 2005

MARY L.M. MORAN
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Alexander Blanco Kitano, hereby certify that I have served a true and correct copy of the foregoing:

Motion to Dismiss Notice of Appeal and
Affidavit For Judicial Notice.

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

Clerk of Court
United States District Court
District of Guam
520 West Soledad Ave., 2nd Floor
Hagåtña, Guam 96910

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 31st day of August 2005.

Respectfully Submitted,


Alexander B. Kitano

REG. NO. 80362-011

RECEIVED
SEP - 6 2005
DISTRICT COURT OF GUAM
HAGATNA, GUAM
STAMPED IN ERROR

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

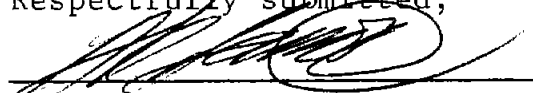
Alexander Blanco Kitano, pro se, :
Prison Reg. No. 80362-011, :
PETITIONER-APPELLANT, : No. 05-16602
v. : D.C. No. CV-05-00019 (RMT)
UNITED STATES of America, :
RESPONDENT-APPELLEE. : MOTION TO DISMISS NOTICE
OF APPEAL

MOTION TO DISMISS NOTICE OF APPEAL

NOW COMES FORTH Petitioner Alexander Blanco Kitano, pro se, respectfully requests this Honorable Court of Appeals for the Ninth Circuit to dismiss the above captioned case, filed on August 25, 2005, on the application for a writ of mandamus. Said Petition for a Writ of Mandamus is now properly before the Supreme Court of Guam, filed on August 8, 2005, Case No. WRM-05-009. See Appendix attached hereto.

8/21/05
DATE

Respectfully submitted,


Alexander B. Kitano, pro se,
Prison Reg. No. 80362-011
United States Penitentiary
P. O. Box 1000
Lewisburg, PA 17837-1000

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Alexander B. Kitano,
Prison Reg. No. 80362-011
United States Penitentiary
P. O. Box 1000
Lewisburg, PA 17837-1000,
PETITIONER,

No. 05-16602
D.C. No. CV-05-00019 (RMT)

v.

UNITED STATES of America,
RESPONDENT.

AFFIDAVIT IN SUPPORT OF JUDICIAL NOTICE

STATE OF PENNSYLVANIA
COUNTY OF UNION

SS: AFFIDAVIT OF ALEXANDER B. KITANO

ALEXANDER BLANCO KITANO, being duly sworn, under the
pains and penalty of perjury, deposes and say:

- 1) That he is representing himself pro se in the
above captioned case without the assistance of counsel.
- 2) That he has made prior correspondence and motion
to dismiss the said above captioned case to the clerk of
court, in the district of Guam, on July 27th and August 9th,
2005.
- 3) That said petition for a writ of mandamus, filed
on June 13, 2005 and dismissed on July 7, 2005, by the
Honorable Judge Robert M. Takasugi, U.S.D.J., for lack
of jurisdiction, is presently in the Guam Supreme Court,
Case No. WRM-05-009, filed on August 8, 2005.

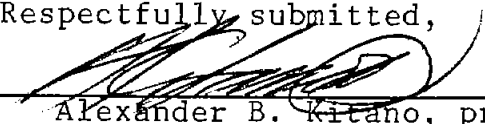
4) That he is presently petitioning this Court of Appeals to dismiss the above entitled case, No. 05-16602, D.C. No. CV-05-00019 (RMT), without prejudice.

I, Alexander Blanco Kitano, declare under the pains and penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 31st day of August 2005.

Respectfully submitted,

BY


Alexander B. Kitano, pro se,
Prison Reg. No. 80362-011
United States Penitentiary
P. O. Box 1000
Lewisburg, PA 17837-1000

COPIES FURNISHED TO: Clerk of Court
U. S. District Court
District of Guam
520 W. Soledad Ave., 2nd Floor,
Hagåtña, Guam 96910

APPENDIX:

**Withdrawal of Notice of Appeal
and Motion to Dismiss, Civil Case No. 05-00019,
Application for Writ of Mandamus,
in relevant part.**

FILED

DISTRICT COURT OF GUAM

JUL - 7 2005

MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

ALEXANDER BLANCO KITANO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Civil Case No. 05-00019

ORDER

Petitioner Alexander Blanco Kitano ("Kitano") filed a Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody and a Motion to Proceed In Forma Pauperis. See, District Court File No. CV 04-00007, Docket No. 3. In an Order filed May 14, 2004, the Court found that Kitano had not exhausted all his state judicial remedies, and dismissed his petition. See, District Court File No. CV 04-00007, Docket No. 5. Kitano asserts that on November 29, 2004 he filed a petition for writ of *habeas corpus* in the Superior Court of Guam that is still pending.¹

Kitano now seeks a writ of *mandamus* from this Court to compel the Superior Court of Guam to expedite his petition citing to *Apusento Garden (Guam) Inc. v. Superior Court of Guam*, 94 F.3d 1346 (9th Cir.1996) to support this Court's jurisdiction to hear his petition.² See, District Court File No. CV 05-00019, Docket No. 1. However, *Apusento Gardens* addresses the jurisdiction that this Court exercised when it was the appellate court for the Superior Court of

¹ Kitano further represents that said petition (Guam Superior Court File No. SP 236-04) was subsequently amended on February 3, 2005.

² In addition to his petition, Kitano filed a motion to proceed *in forma pauperis*. See, District Court File No. CV 05-

1 Guam under 48 U.S.C. § 1424-3.³ Because there is now a sitting Supreme Court of Guam this
2 Court no longer exercises appellate jurisdiction over acts of the Superior Court of Guam. *See*,
3 48 U.S.C. § 1424-1,⁴

4 This Court lacks jurisdiction to hear Kitano's petition as it is more properly brought
5 before the Supreme Court of Guam. Accordingly, Kitano's petition for writ of *mandamus* is
6 hereby DISMISSED.

7 **IT IS SO ORDERED** this 14 day of July, 2005.

8 Notice is hereby given that this document was
9 entered on the docket on JUL - 7 2005.
10 No separate notice of entry on the docket will
11 be issued by this Court.

12 **Mary L. M. Moran**

13 **Clerk, District Court of Guam**

14 **By: /s/ Shirlene A. Ishizu** JUL - 7 2005

15 **Deputy Clerk** **Date**


16 **Robert M. Takasugi**
17 **United States District Judge**

18 ³ 48 U.S.C. § 1424-3(a) states in pertinent part:

19 Prior to the establishment of the appellate court authorized by section 1424-1(a) of this
20 title, which is known as the Supreme Court of Guam, the District Court of Guam shall
21 have such appellate jurisdiction over the local courts of Guam as the legislature may
22 determine . . .

23 ⁴ 48 U.S.C. § 1424-1(a) states in pertinent part:

24 The Supreme Court of Guam shall be the highest court of the judicial branch of Guam
25 (excluding the District Court of Guam) and shall

- 26 (1) have original jurisdiction over proceedings necessary to protect its
27 appellate jurisdiction and supervisory authority and such other original
28 jurisdiction as the laws of Guam may provide;
(2) have jurisdiction to hear appeals over any cause in Guam decided by the
Superior Court of Guam or other courts established under the laws of Guam;
(3) have jurisdiction to issue all orders and writs in aid of its appellate,
supervisory, and original jurisdiction, including those orders necessary for
the supervision of the judicial branch of Guam;
(4) have supervisory jurisdiction over the Superior Court of Guam and all
other courts of the judicial branch of Guam;
(5) hear and determine appeals by a panel of three of the justices of the
Supreme Court of Guam and a concurrence of two such justices shall be
necessary to a decision of the Supreme Court of Guam on the merits of an
appeal;
(6) make and promulgate rules governing the administration of the judiciary
and the practice and procedure in the courts of the judicial branch of Guam,
including procedures for the determination of an appeal en banc; and

* The Honorable Robert M. Takasugi, United States Senior District Judge for Central California, by designation

Alexander B. Kitano
Prison Reg. No. 80362-011
United States Penitentiary
P. O. Box 1000
Lewisburg, PA 17837-1000

ATTN: Clerk of Court,
Mary L. Michels
U.S. District Court
District of Guam
520 W. Soledad Ave., 2nd Fl.
Hagåtña, Guam 96910

July 27, 2005.

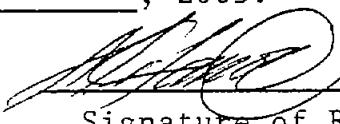
Re: WITHDRAWAL of Notice of Appeal on CV05-00019 Order.

Dear Clerk of Court:

I am cordially requesting to withdraw the Notice of Appeal, filed and dated July 7, 2005, on CV05-00019 Order, sent to this Court.

Thanking this Honorable Court and the Clerk of Court for accepting this correspondence request in the matter at hand.

I, Alexander B. Kitano, declare under the pains and penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this day 27th of July, 2005.

 #80362-011
Signature of Requestee

Mary L. M. Moran,
Clerk of Court
U. S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagåtña, Guam 96910

August 9, 2005.

By Mail Correspondence Delievery

Re: Motion to Dismiss Notice of Appeal, on Application for
Writ of Mandamus, Civil Case No. 05-00019, filed on
July 26, 2005.

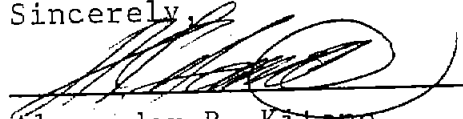
Dear Clerk of Court:

Please be advised that I am in receipt of Notice of Appeal Notification Form and Docket Sheet forwarded by Rosita P. San Nicolas, Deputy Clerk, in regard to the above entitled case. I am also in receipt of the Errata amendment order issued by the Honorable Chief Judge, Consuelo B. Marshall.

I am attaching a Motion to Dismiss the above entitled case.^{1/} Once it has been filed, please return a copy to me for my files. Your prompt response will be greatly appreciated.

Thanking the Clerk of Court and this Honorable Court for the assistance and pertinent matters rendered.

Sincerely,



Alexander B. Kitano
Prison Reg. No. 80362-011
United States Penitentiary
P. O. Box 1000
Lewisburg, PA 17837-1000

^{1/} A Certificate of Service is attached and has been served in the Superior Court of Guam to the Clerk of Court.

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

Alexander Blanco Kitano, pro se,
Prison Reg. No. 80362-011,
PETITIONER,

Civil Case No. 05-00019

vs.

Designated Judge, Superior
Court of Guam, Case No. SP0236-04,
RESPONDENT.

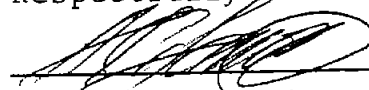
MOTION TO DISMISS NOTICE OF APPEAL

APPLICATION FOR WRIT OF MANDAMUS, CIVIL CASE NO. 05-00019

NOW COMES FORTH Petitioner Alexander Blanco Kitano, acting pro se, respectfully moves this Honorable Court to dismiss the Notice of Appeal filed on July 26, 2005, application for writ of mandamus.

I, Alexander Blanco Kitano, declare under the pains and penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 24th day of August, 2005.

Respectfully submitted,



Alexander B. Kitano, pro se,
Prison Reg No. 80362-011